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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,816	06/15/2001	Dan Huntington	4864-002	7916

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EXAMINER

NGUYEN, PHUOC H

ART UNIT PAPER NUMBER

2143

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/882,816

Applicant(s)

HUNTINGTON, DAN

Examiner

Phuoc H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☒ Claim(s) 5-6 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4 rejected under 35 U.S.C. 102(e) as being anticipated by Moore et al. (Hereafter, Moore) U.S. Pat. No. 6,618,752.
3. Regarding claim 1, Moore discloses a method for arranging nodes within a wide-area network for peer-to-peer delivery of live content over the network, said network having at least a primary host computer and at least three client/server tiers comprised of a plurality of client computers (Figures 1 and 5(a-d)), the method comprising: storing a current network configuration for the three client/server tiers on the primary host computer (eg. supervisory server) including a speed ranking for each of the client computers (col. 7, lines 30-35 and 48-67); receiving at the primary host computer (eg. supervisory server) a request over the network from a new client computer (eg. Jth client) for content (eg. Multicast stream) (Figure 4A, 420); performing a connection speed testing operating on the new client computer to obtain a speed ranking (eg. measuring bandwidth from Jth client) for the new client computer (Figure 4A, 408); comparing the speed ranking of the new client computer with the speed ranking of at least one of the client computers (col. 8, 1st paragraph); and based on this comparison, inserting the new

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client computer within one of the three client/server tiers to form a new network configuration wherein the primary host computer serves content to a first tier of the three client/server tiers, client computers of the first tier serve content to a second tier of the three client/server tiers, and client computers of the second tier serve content to a third tier of the three client/server tiers (Figures 5(b-d); col. 8, 1st paragraph; and col. 8, lines 54-60).

4. Regarding claim 1, Moore further discloses storing on the primary host computer an order among each of the plurality of client computers for issue a request for content to the primary host computer (Figure 3b; col. 5, lines 66 through col. 6, 1st paragraph; and col. 7, lines 28-41); determining a most recent one of the client computers to issue a request for content, comparing the speed ranking of the new host computer to the most recent one of the client computers (col. 8, 1st paragraph); and replacing within the network the most recent one of the client computers with the new client computer if the new client computer has a higher speed ranking than the speed ranking of the most recent one of the client computers, otherwise comparing the speed ranking of the new client computer with a second most recent one of the client computers (Figures 5(b-d); and col. 8, lines 45-60).

5. Regarding claim 3, Moore further discloses step of pushing the most recent one of the client computers to a lower tier after the replacing step (Figure 5d; col. 8, lines 54-60).

6. Regarding claim 4, Moore further discloses comparing the speed ranking of the new client computer to each of the plurality of client computers within the network (col. 8, 1st paragraph); and if the new client computer has a speed ranking equal to or slower

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than the plurality of client computers, then connecting the new client computer as a client node for receiving content from a selected one of the plurality of client computers within the network (col. 8, lines 38-60).

Allowable Subject Matter

7. Claims 5 and 6 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Chevalier et al. U.S. Patent 5,881,050 disclose method and system for non-disruptively assigning link bandwidth to a user in a high speed digital network.

Galand et al. U.S. Patent 6,628,670 disclose method and system for sharing reserved bandwidth between several dependent connections in high speed packet switching networks.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 703-305-5315. The examiner can normally be reached on Mon -Thu (7AM-4: 30PM) and off every other Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on 703-308-5221. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phuoc H. Nguyen
Examiner
Art Unit 2143

September 17, 2004


JACK B. HARVEY
SUPERVISORY PATENT EXAMINER